

IRENE GUTIERREZ
Claimant

THE BOEING COMPANY - WICHITA
Respondent

AETNA CASUALTY & SURETY COMPANY
Insurance Carrier

KANSAS WORKERS COMPENSATION FUND

ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

Special Administrative Law Judge David A. Shufelt awarded claimant permanent partial disability benefits for a 41 percent work disability and denied respondent's request to shift liability to the Workers Compensation Fund. The respondent and its insurance carrier requested this review and asks the Appeals Board to review the findings of nature and extent of disability and the liability of the Workers Compensation Fund. Those are the issues now before this Board on review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award of the Special Administrative Law Judge dated December 14, 1995 should be affirmed.

The Appeals Board finds the Special Administrative Law Judge analysis and conclusions to be appropriate and supported by the greater weight of the evidence. The Appeals Board hereby adopts the findings set forth in the Award as its own. In addition, the Appeals Board specifically finds that claimant retired because of her work-related injuries and respondent neglected and failed to offer her work within her physical capabilities despite her requests for accommodation. The Appeals Board also finds that claimant sustained a series of mini-traumas which constituted one accidental injury and, therefore, respondent did not have knowledge of a preexisting condition that constituted a handicap. Further, although respondent may have been aware that claimant was experiencing symptomatology before her termination, that knowledge did not rise to the level of knowledge that claimant had an impairment significant enough to constitute a handicap in obtaining or retaining employment. Therefore, the Special Administrative Law Judge properly denied respondent's request to shift liability to the Workers Compensation Fund.

As a potential defense, the respondent in its brief to the Appeals Board cited the case of Boucher v. Peerless Products, Inc., 21 Kan. App. 2d 977, ___ P.2d ___ (1996), for the proposition that claimant is not entitled to compensation, other than medical benefits, because she was not disabled from working for a period of at least one week following the injury. Because this issue was not raised before the Administrative Law Judge, the Appeals Board will not consider it for the first time upon review. As provided by K.S.A. 1995 Supp. 44-555c, Appeals Board review "shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge."

Before oral argument, claimant filed a Motion to Affirm the Special Administrative Law Judge's Award upon the basis that the respondent filed its brief with the Appeals Board in an untimely manner. As determined in a number of earlier decisions, the Appeals Board finds claimant's argument without merit and her request without authority. Neither statute nor administrative regulation exists which grants the Appeals Board the authority to dismiss a request for review when a party fails to file its brief in a timely manner. The Appeals Board requests the parties to prepare briefs because those serve to focus the Appeals Board and the parties upon only those issues that remain in dispute. Although well-prepared briefs significantly assist in the efficient administration of the review process, the Appeals Board recognizes it does not have the authority to enforce compliance with the briefing schedule in the requested manner.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge David A. Shufelt dated December 14, 1995 should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Richard Sanborn, Wichita, KS
Frederick L. Haag, Wichita, KS
Cortland Q. Clotfelter, Wichita, KS
David A. Shufelt, Special Administrative Law Judge
Philip S. Harness, Director